

This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 WELLINGTON 000160

SIPDIS

DEPARTMENT FOR EB/ESC/TFS, EAP/ANP AND S/CT

E.O. 12958: DECL: 02/22/2015

TAGS: [KTFN](#) [EFIN](#) [PTER](#) [PREL](#) [NZ](#)

SUBJECT: NEW ZEALAND AIMS TO STRENGTHEN ITS TERRORIST
FINANCE LAWS

Classified by: DCM David R. Burnett. Reasons: 1.4 (b) and (d).

1. (U) Summary: The New Zealand government continues to tighten provisions of an anti-terrorism law it enacted more than a year after September 11, 2001, and that it amended in 2003. The government recently introduced legislation that will delay the expiration date for New Zealand's designations of terrorist organizations to 2007. The bill also proposes extending the law's reach to cover intentional financing of non-designated terrorist organizations. The changes are aimed at keeping New Zealand in compliance with UN Security Council Resolution 1373, as well as to follow recommendations presented in a Financial Action Task Force review. More changes are coming, with a government review of the anti-terrorism law scheduled for completion by December 1, 2005.

2. (C) Meanwhile, the government is grappling with procedural issues that often have delayed New Zealand's designation of terrorist individuals and entities. Its law does not allow for the automatic designation of terrorists as listed by the United Nations. Nor has New Zealand yet designated as a terrorist any individual or entity that was not already UN-listed, largely because it lacks procedures for handling classified information in its courts. Post continues to work with New Zealand officials to determine whether the U.S. government might help the New Zealand government as it works to revamp its legislation and court procedures. End summary.

Changes in the law

3) (U) On February 10, Justice Minister Phil Goff introduced in Parliament a second amendment to the Terrorism Suppression Act 2002, the law that allows the government to designate terrorists and terrorist organizations and to freeze their assets. The act's drafters had assumed that some designations might be short-lived, and so the law requires that New Zealand's designations of terrorist organizations -- covering 318 organizations listed by the UN Security Council -- expire in October unless renewed individually by the High Court. The amendment extends the expiration date by two years, to 2007, aiming to keep New Zealand in compliance with UN Security Council Resolution 1373 and related resolutions. The extension also accommodates an ongoing government review of the Terrorism Suppression Act, which is expected to recommend additional changes to the law when it is completed by December 1, 2005. The government hopes to pass the amendment by July, well before national elections that probably will be held in September, as the resulting change in government appointments could delay the bill's implementation.

4) (C) The amendment also would extend the law's prohibitions against financing terrorist acts and designated terrorist entities to apply to the intentional financing of non-designated terrorist organizations. To be illegal, the funding would not necessarily have to be used to support a specific terrorist act. Any support of the organization would be banned. This change addresses a shortcoming in New Zealand's law identified in a review by the OECD's Financial Action Task Force on Money Laundering (FATF). Gabrielle Rush (strictly protect), an adviser in the Ministry of Foreign Affairs and Trade's legal division, said the government believes that successful prosecutions under the provision would be unlikely, given the difficulty of proving a person "knowingly" financed a terrorist group. Nonetheless, the government wants to comply with FATF's Eight Special Recommendations on terrorist financing and its revised 40 Recommendations. New Zealand was among the first countries to undergo a FATF peer review of its terrorist financing and money-laundering laws. Recommendations by the review, which was completed in late 2003, have not yet been published, although the government received the task force's draft report in mid-2004.

5) (U) On February 16, Minister Goff announced additional laws to counter terrorist financing and money laundering, all intended to satisfy FATF's recommendations. The laws would set up a monitoring regime to ensure compliance by financial and other institutions with anti-money laundering and terrorist finance requirements. Currency changers and funds

remitters -- currently unregulated -- would be required to register and would be subject to the same reporting requirements as banks. Financial institutions would have to obtain, verify and retain information about the identity of people sending wire transfers. Minister Goff explained in a statement, "New Zealand's largely deregulated financial system results in potential loopholes in our system that require closing in order to meet strict international requirements."

Problems in the law

16. (C) New Zealand has largely complied with UNSCR 1373. It has not yet identified any terrorist assets in the country. But the government's process for designating UN-listed terrorist entities can involve delays. Since enactment of the Terrorism Suppression Act, the New Zealand Police have initiated the designation process, determining whether sufficient criteria exists -- even for UN-listed entities. The process is a slow one: The police draft applications for designation, circulate them among relevant government offices and send them to the Prime Minister for her final approval. Although the Prime Minister has approved all designations presented by police, weeks can pass between designation of an individual or entity by the United Nations and designation by New Zealand. Previously, a stopgap measure approved by Cabinet on November 26, 2001, had provided for the automatic designation of UN-listed entities in New Zealand. A year later, it was replaced with the Terrorism Suppression Act, which designated in New Zealand all entities listed by the United Nations by October 18, 2002. (Those designations will expire in October under the current law.) Since then, designations have been made through the process shepherded by police.

17. (C) Even for UN-listed individuals and entities, police must build a case for their designation in New Zealand that meets the Terrorism Suppression Act's requirements, according to Bill Peoples (strictly protect), crime policy and projects officer for the New Zealand Police. That means the police case must provide the Prime Minister with "reasonable grounds" for believing that an individual or entity knowingly carried out or participated in a terrorist act, before she can designate it. Peoples said that in some cases the government's legal counsel, Crown Law, has questioned whether the United Nations had sufficient evidence to make a designation.

18. (C) If the designations are sponsored by the United States, providing "reasonable grounds" can be relatively easy, Peoples said. The U.S. government supplies a statement of case when it pre-notifies the New Zealand government before submitting names for designation to the UN 1267 Sanctions Committee. However, some nations do not authorize the United Nations to identify them or to release their statements of case when they submit names for designation. In such instances, the police are forced to independently build a case for designations.

19. (C) Flaws in the law stem from how it was drafted, said Rush of the Ministry of Foreign Affairs and Trade (MFAT). When the law was first introduced, a number of legislators immediately objected that the bill would unfairly impinge on civil liberties. In the end, it took a year to be reviewed and passed, and provisions had been watered down. As Rush explained, some New Zealanders fear the law could be applied to someone like Nelson Mandela, who was labeled a terrorist by his government but who many consider a "freedom fighter." While New Zealand's designations under the Terrorism Suppression Act have not been challenged in court and no New Zealander has been designated, Rush said the government worries about how it would defend designation of a New Zealander based on the UN list, if information behind the listing were not available. New Zealand officials expect their planned, future revisions will eliminate the law's weaknesses, as now there are clearer international best practices in place.

10. (C) Peoples and Rush said the government also is exceedingly cautious because of the case of Ahmed Zaoui, a former member of Algeria's parliament who sought refugee status on arrival in New Zealand in December 2002. In a statement on entities designated as terrorists by the Prime Minister in September 2004, Zaoui's political party -- the Islamic Salvation Front, or FIS -- was linked to an individual who has ties to al Qaida. At the time, the government was under pressure by Zaoui's supporters because it continued to keep him in custody, largely on the basis of classified information. While the UN designation did not link the FIS to al Qaida, the New Zealand police had based the statement on open sources. But, that information was subject to different interpretations, and the police ultimately withdrew the statement and apologized. Peoples said the designation has been the only problematic one presented to the Prime Minister for approval. The Zaoui case is still pending, and New Zealand officials are reviewing

possible legislative changes that would eliminate conflicts between the country's immigration and refugee laws that the case has exposed. In the meantime, publicity surrounding the case has increased the Prime Minister's cautiousness -- and that of Crown Law and other government agencies -- in considering police proposals for designations.

11. (C) In addition, the New Zealand government has not yet designated individuals and entities as terrorists that are not already designated by the UN, because the courts lack procedures for the introduction of classified information in trials, Rush said. Crown Law and the judiciary are working to establish such procedures. Until then, the government is reluctant to designate entities not on the UN list because of the fear of legal challenges. In the meantime, Peoples said he is preparing a proposal to designate Hezbollah based only on open-source documents. He is uncertain whether such a case would provide "reasonable grounds" for a designation.

12. (C) The police are preparing a list of issues they want addressed by the Foreign Affairs, Defense and Trade Select Committee, which is reviewing the Terrorism Suppression Act. Those include the lack of an automatic designation of UN-listed entities. Other government departments also have been asked to comment on the law. Rush said the government will be studying the designation process in other countries and will consider two tracks for designations, one for UN-listed entities, possibly incorporating a degree of automaticity, and another for entities not designated by the United Nations.

13. (C) Comment: Rush and Peoples noted that more open-source information would be helpful in obtaining designations. Post will continue to work with EB/ESC/TFS and other relevant offices to determine whether additional U.S. government information could be provided to New Zealand, at least until it revises its law and court procedures.

Swindells